U.S. Army Corps of Engineers
Albuquerque District

Proposed 2007 Regional Conditions in New Mexico

PROPOSED REGIONAL CONDITIONS TO NATIONWIDE PERMITS
IN THE STATE OF NEW MEXICO

Proposed **Regional Conditions Applicable to Specific Nationwide Permits within the State of New Mexico**

a. Nationwide Permit Nos. 12 and 14 - Utility Line Activities and Linear Transportation Projects. In New Mexico, utility line and road activities crossing perennial waters or special aquatic sites require notification of the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). In addition, post-construction reporting for activities in all other jurisdictional waters is required and must contain information required by General Condition 27 (Pre-Construction Notification) including location, supporting drawings and maps. The post-construction reporting must also include a statement certifying that the General Conditions of the nationwide permits have been followed.

b. Nationwide Permit No. 13 - Bank Stabilization. In New Mexico, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks on each bank) are limited to the placement of no more the 1/4 cubic yard of suitable fill* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard per running foot may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines adverse environmental effects are minimal. [See (n) for definition of Suitable Fill]

c. Nationwide Permit No. 14 - Linear Transportation Crossings. In perennial waterways in New Mexico, culverts will be designed to provide for fish passage. Culverts will be designed and installed so that water flow shall be at least 0.8 feet deep (if practicable), the maximum hydraulic drop in the culvert will not exceed 0.8 ft, and the maximum velocity will not exceed 4.0 fps for culverts less than 100 feet long, 3.0 fps for culverts 100-200 feet long, and 2.0 fps for culverts longer than 200 feet. These flow criteria will be satisfied at least 90 percent of the time during the migration of the target species and age class.

d. Nationwide Permits No. 29 - Residential Developments, and No. 39 - Institutional and Commercial Developments. In New Mexico, these permits do not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow.

e. Nationwide Permit No. 44 Mining Activities. This nationwide permit is **revoked** within the state of New Mexico.

Proposed Regional Conditions Applicable to All Nationwide Permits within the State of New Mexico

f. Activities Involving Fills in Perennial Waters or Wetlands Larger than 1/2 Acre. In New Mexico, any activity that involves filling in perennial waters or wetlands larger than 1/10 acre, may be authorized only after the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification); and any activity that exceeds 1/2 acre of fill in waters of the United States will **not** be authorized by any nationwide permit.

g. Springs. In the State of New Mexico, all nationwide permits are revoked within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where ground water emanated from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

h. Activities in Special Aquatic Sites. In New Mexico, no nationwide permit will authorize an action in special aquatic sites, including wetlands, whose principal activity is not water dependent; unless the District Engineer has been notified in accordance with General Condition 27 (Pre-Construction Notification).

i. Pre-Construction Notifications (PCNs). For those activities authorized by Nationwide Permits Nos. 4, 13, 27, and 30, that require notification to the District Engineer (DE), the DE will notify the New Mexico Department of Game and Fish and other appropriate agencies.

j. Aquatic Life Movements. In New Mexico, General Condition 2

(Aquatic Life Movements) is amended to require that all activities that would impede aquatic life movement or migration including those construction activities whose purpose is to impound water, will require efficient fish passage structures except when the structure is specifically designed to prevent such movement (barriers to prevent upstream movement of non-native fish to protect native fish species).

k. New Mexico State Threatened and Endangered Species. General Condition 17 (Endangered Species) is amended by adding the following: notification of the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) is required for any activity that occurs in habitat occupied by a New Mexico state threatened or endangered species identified under the authority of the New Mexico Wildlife Conservation Act (NMSA 17-2-37 through 17-2-46, 1978) or which is listed under the Federal Endangered Species Act. Consultation with the New Mexico Department of Game and Fish may also be required. (See also Additional Information "b.", Designated Critical Resource Waters in New Mexico).

l. Important Spawning Areas. To comply with General Condition No. 3, Spawning Areas, nationwide permit activities in New Mexico are not authorized without notification if such activities would: (a) destroy important spawning areas; (b) be conducted in spawning habitats during spawning seasons for trout and Kokonee salmon (spawning for rainbow and cutthroat trout is from March 15 through July 15, and for brown and brook trout and Kokonee salmon is from September 1 through November 30). For any nationwide permit activities occurring in these waters during spawning seasons, the permittee must notify the District Engineer in accordance with General Condition 27 (Pre-Construction Notification), who will notify the appropriate agency before the activity is permitted.

Important spawning areas are defined as those waters that have been designated as High Quality Cold Water Fisheries (HQCWF) by the New Mexico State Environment Department, Surface Water Quality Bureau (SWQB). The SWQB defines a HQCWF as "a perennial stream reach in a minimally disturbed condition which has considerable aesthetic value and a superior coldwater fishery habitat. A stream reach so categorized must have water quality, stream bed characteristics, and other attributes of habitat sufficient to protect and maintain a propagating coldwater fishery (i.e., a population of reproducing salmonids)." A listing of all HQCWF can be found in the New Mexico Standards for Interstate and Intrastate Streams, 20 NMAC 6.1.

m. Gradient. General Condition 9 (Management of Water Flows) is amended to add the following: In New Mexico, projects that will result in changes to local stream gradient, streambed elevation, direction, velocity of streamflow, or cause any significant changes in channel size, shape and aquatic habitat (unless the project specifically designed to restore previously degraded and unstable streams) require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).

n. Suitable Fill. In New Mexico, use of broken concrete or used tires formed into bales as fill material requires notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete or used tires as bales are allowed as suitable fill. Use of broken concrete with rebar is prohibited in perennial waters (waterways) and wetlands (special aquatic sites), in accordance with 20 NMAC 9.1, Solid Waste Management.

i. Fens: In New Mexico, nationwide permits No. 1, 2, 4, 6-11, 13-19, 21-25, 28-31, 33-36, and 39-44 are **revoked** for activities in these regionally important aquatic resources. Fens are defined as wetlands which are characterized by water logged spongy ground and contain, **in all or part**, soils classified as histosols* or mineral soils with a histic epipedon*. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

*Histosols have 40 centimeters (16 inches) or more of the upper 80 centimeters (32 inches) an organic soil material (or less over bedrock). Organic soil material has an organic carbon content (by weight) of 12 to 18 percent, or more, depending on the clay content of the soil. Histic epipedons have a 20 to 60 centimeter-thick (8-24 inches) organic soil horizon that is at or near the surface of a mineral soil. Histosols and histic epipedons are widely recognized as organic soils formed by slow accumulation of plant debris in waterlogged situations where it cannot decompose. (More information on histosols can be obtained from the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States.

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing General Conditions:

a. Permittees are reminded of General Condition Number 6 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires and trash are **not** suitable fill material. Also, General Condition Number 12 requires appropriate erosion and sediment controls (i.e., all fills must be permanently stabilized to prevent erosion and siltation into water and/or wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition Number 12.

b. Designated Critical Resource Waters in New Mexico. In New Mexico, a list of designated Critical Resource Waters has been published in accordance with General Condition 19 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page and will be attached to nationwide permit summaries distributed to the public. A copy is attached (see Enclosure 1).

Enclosure 1.

Designated Critical Resource Waters in New Mexico

In New Mexico, the following list of designated Critical Resource Waters is published in accordance with General Condition 19 (Designated Critical Resource Waters). See General Condition 19 of the nationwide permits for restrictions of nationwide permit use.

Critical Herp Habitat
Critical Herp habitat is defined as that habitat which is known to be occupied by state threatened and endangered reptiles and amphibians under the New Mexico Wildlife Conservation Act, but are not listed as threatened and endangered under the Federal Endangered Species Act.

All perennial reaches of the Gila River, the San Francisco River and Mule Creek. These waters are native habitat for the Narrowhead garter snake (Thamnophis rufipunctatus) and the Mexican garter snake (Thamnophis eques).

Critical Invertebrate Habitat
Critical invertebrate habitat is defined as that habitat which is known to be occupied by state threatened and endangered invertebrates under the New Mexico Wildlife Conservation Act, but are not listed as threatened and endangered under the Federal Endangered Species Act.

Blue Spring and the associated springbrook riparian corridor, Eddy County, NM. Blue Spring is the primary hydrologic source for perennial reaches of the Black River. Blue Spring provides aquatic habitat for the endemic Pecos springsnail (Pyrulopsis pecosensis), and the land snail, Vertigo ovata.
Willow Spring, "Willow Spring Ranch" (formerly Cienega Ranch), Socorro Co., NM. Native habitat for the endemic Chupadera springsnail (Pyrgulopsis chupaderae).
Torreon Spring, Pound Ranch, Socorro Co., NM. Native habitat for the endemic New Mexico springsnail (Pyrgulopsis neomexicana).
Ojo Caliente-Warm Spring wetland complex, Socorro Co., NM. Native habitat for the endemic Alamosa springsnail (Tryonia alamosae).
Sedillo Spring, Socorro Co., NM. Native habitat for the Socorro isopod.
Canadian River drainage, including perennial tributaries (Conchas River, Trementina Creek, Ute River), Conchas Lake, and Ute Reservoir. Habitat for the paper pondshell mussel (Utterbackia imbecillis).

All perennial reaches of the Black River, Eddy county. Native habitat for the only population of the Texas hornshell (Popenaias popei) in New Mexico.

Critical Fish Habitat
Critical fish habitat is defined as that habitat which is known to be occupied by state threatened and endangered fish under the New Mexico Wildlife Conservation Act, but are not listed as threatened and endangered under the Federal Endangered Species Act.

Gila chub (Gila intermedia).
Mule Creek (a San Francisco River tributary) and
Turkey Creek (a Gila River tributary)

Roundtail chub (Gila robusti).
Gila River: New Mexico reaches of the Upper East Fork of the Gila River, the Lower Middle fork of the Gila River and the lower most West Fork of the Gila River.
San Juan River Drainage: New Mexico reaches of the
Mancos River,
La Plata River,
Florida River and
Animas River

Arkansas River speckled chub (Macrhybopsis aestivalis tetranemus)
South Canadian River, downstream of Ute dam to the Texas/New Mexico border.

Suckermouth minnow (Phenocobius mirabilis)
South Canadian and
Dry Cimarron River

Southern redbelly dace (Phoxinus erythrogaster)
Headwaters of the Mora River,
including Coyote Creek and
tributaries to Black Lake

Zuni bluehead sucker (Catastomus discobolus yarrowi)
Rio Nutria upstream of the mouth of Nutria Box Canyon near the eastern boundary of the Zuni Indian Reservation and the Agua Remora.

Enclosure 1, Designated Critical Resource Waters in NM (cont.)

Blue Sucker (Cycleptus elongatus)
Pecos River, downstream from Brantley Dam to the Texas - New Mexico border and the lower reaches of the Black River

Gray Redhorse (Moxostoma congestum)
Pecos River, from Carlsbad downstream to the New Mexico - Texas border and the lower reaches of the Black River.

Mexican tetra (Astyanas mexicanus)
Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to the New Mexico - Texas border, the
Black River and
Delaware River

White Sands pupfish (Cyprinidon tularosa)
All perennial aquatic habitat within the U. S. Army White Sands Missile Range and the Holloman Air Force Base.

Pecos pupfish (Cyprinidon pecosensis)
Pecos River and associated floodplain habitats from Bitter Lake National Wildlife Refuge downstream to near Malaga Bend
Gypsum sinkholes, isolated oxbows and artificial impoundments on Bitter Lake National Wildlife Refuge and habitats associated with Bottomless Lakes State Park.

Bigscale Logperch (Percina macrolepida)
Pecos River between Santa Rosa and Fort Sumner Reservoir,
the lower Pecos River near Brantley Reservoir and the
Black River

Greenthroat darter (Etheostoma lepidum)
Bitter Creek and gravel-bottomed ponds on Bitter Lake National Wildlife Refuge,
Cottonwood Creek, Blue Spring and Rattlesnake Springs in Carlsbad Caverns National Park

SPECIAL TROUT WATERS

Special trout waters are managed to provide anglers with the opportunity to experience superior high quality fishing. These waters have reduced bag limits or are catch and release. Accordingly, they need to be protected during construction activities permitted under CWA Sec. 404. No activities are authorized under any nationwide permits for activities occurring in these waters without Pre-Construction Notificaiton to the Corps and the appropriate state agencies.

Pecos River Drainage
Pecos River "Box" from 1/2 mile above the confluence of the Mora and Pecos, upstream 1-1/2 miles to 1/4 mile above Cowles Bridge
Pecos River in the Pecos Wilderness above Pecos Falls
Doctor Creek from 1/4 mile above its confluence with Holy Ghost Creek, upstream to its headwaters
Jacks Creek from the waterfalls located 1/4 mile downstream from NM Hwy 63 crossing, upstream to its headwaters
Rio Valdez in the Pecos Wilderness form 1/4 mile below Smith Cabin, upstream to its headwaters

Jemez River Drainage
Rio Cebolla from the Seven Springs Day Use Area upstream to its headwaters
Rio Guadalupe from Porter Landing Bridge 1.3 miles downstream to Llano Loco Spring
San Antonio River from the Baca Location boundary downstream 2 miles.

San Juan River Drainage
San Juan River from Navajo Dam downstream 3-3/4 miles to east side of Section 16.

Rio Costilla Drainage
Valle Vidal - all streams in the Valle Vidal including Shuree Lakes
Rio Costilla from Valle Vidal Boundary 2.4 miles downstream to Latir Creek

Chama River Drainage
All waters within the Sargent Wildlife Area including Nabor Creek and Nabor Lake, Rio Chama, Rio Chamita and Sexto Creek
Chama River 2.9 miles within the Rio Chama Wildlife and Fishing Area
Chama River from Abiquiu Dam downstream 7 miles to the U.S. bridge at Abiquiu

Enclosure 1, Designated Critical Resource Waters in NM (cont.)

Upper Rio Grande Drainage and its tributaries
Rio Grande from Colorado line downstream to the Taos Junction Bridge
Red River from the confluence of Goose Creek for 1 mile upstream as posted
Red River from 1/2 mile below walking bridge at the Red River State Hatchery downstream to confluence with the Rio Grande
Rio De Los Pinos from USFS Roads 284 & 87A, 2-1/2 miles upstream to private land
Rio Pueblo between the bridge at Mile Marker 55 on State Hwy 518 upstream 1 mile to Canon Tio Maes Trailhead, as posted

Lower Rio Grande from Elephant Butte Dam downstream to Caballo Lake including Caballo Lake

Cimarron River from east end of Tolby Campground downstream 1.4 miles to first U.S. 64 bridge

Rio Las Animas within the Gila National Forest, Black Ranger District

Gilita Creek from the Gila Wilderness downstream 5 miles to Snow Creek

Rio Ruidoso along U. S. 70 in Ruidoso Downs from Merriam Drive downstream 0.7 miles

CRITICAL DESIGNATED RESOURCE AREAS FOR RIO GRANDE CUTTHROAT

For any nationwide permit activities occurring in waters where Rio Grande cutthroats occur, the permittee must notify the Corps in accordance with the Notification general condition, who will provide Pre-Construction Notification for review, to the appropriate agency before the activity is permitted. All locations where Rio Grande cutthroat populations are known to occur are:

CANADIAN DRAINAGE

Colfax County
American Creek
Clear Creek
Leandro Creek
Middle Ponil Creek
Ricardo Creek
South Ponil Creek

Mora County
Luna Creek (Near Mora)
Mccrystal Creek
Murphy Creek
Santiago Creek

PECOS DRAINAGE

Mora County
Jarosa Creek (Below Pecos Falls)
Pecos River (Above the falls)
Rio Valdez
Rito Azul (Rito de Las Chimayosos)
Rito De Los Chimayosos
Rito Del Padre
Rito Maestas (Rio del Padre)

San Miguel County
Cave Creek
Dalton Creek
Doctor Creek
Indian Creek
Macho Creek
Jacks Creek

RIO GRANDE DRAINAGE

Rio Arriba County
American Creek (Jemez)
Canjillon Creek
Canones Creek (Jemez)
Cecilia Creek (Rio Gallina Basin)
Chihuahuenos Creek (Jemez Mts)
Clear Creek (Jemez)
El Rito Creek
El Rito Creek Upper (Fifteen Springs)
Jaroso Creek (El Rito)
Nabor Creek (Sergent Wildlife Area)

Polvadera Creek (Canones Creek)
Resumidero Creek & Oso Creek (San Pedro Parks)
Rio de La Cebolla (Rio Quemado-Truchas)
Rio De Las Vacas (Perchas, Anastacio)
Enclosure 1, Designated Critical Resource Waters in NM (cont.)

Rio De Truchas (Rio Quemado)
Rio Del Oso (Chama)
Rio Nutrias (Tres Piedras)
Rio Puerco West
Rio Santa Barbara (east fork)
Rio Santa Barbara (middle fork)
Rio Santa Barbara (West Fork)
Rio Tusas - little Tusas
Rio Tusas-lower
Rio Tusas-upper
Rito Cafe
Rito De Las Perchas
Tanques Creek (Tres Piedras)
Tio Grande (Tres Piedras)
Willow Creek (Jicarilla)-restored-1998

Sandoval County
Cochiti Creek watershed
Peralta Creek
La Jara Creek (Rio Puerco)
Rio Cebolla
Rito de las Palomas (Jemez)
Rito de Los Pinos (Jemez)

Santa Fe County
Rio Capulin
Rio Frijoles Creek
Rio Nambe

Sierra County
Rio Las Animas, including the Holden Prong and Murphy Place

Taos County
Red River Drainage
Bitter Creek
Cabresto Creek
Cabresto Creek (Lake Fork)
Columbine Creek (Deer, Placier, Willow)
Sawmill Creek (Red River)

Valle Vidal Drainage
Rio Costilla
Comanche Creek
Fernandez Creek (Comanche)
Little Costilla Creek (Comanche)
Powderhouse Creek
Chuckwagon Creek (Comanche)
Vidal Creek (Comanche)

Hondo Drainage
Gavilan Canyon Creek (Rio Hondo de Taos)
Italianos Creek (Rio Hondo de Taos)
Rio Hondo -South Fork (Wheeler Peak)
Yerba Creek (Rio Hondo de Taos)

Rio Grande Del Rancho Drainage
Fowler Creek (Rio Grande Del Rancho)
Saloz Creek (Rio Grande del Rancho)
Jaroso Creek/ Saloz (Rio Grande del Rancho)
Rio Chiquito (Rio Grande del Rancho)

Rio Pueblo Drainage
Agua Piedra (Rio Pueblo)
Alamitos Creek (Rio Pueblo)
Frijoles Creek (Rito de la Olla)
Indian Canyon (Penasco)
Agua Caliente (Pilar)
La Cueva Creek
Osha Creek
Palociento Creek
Rito de la Olla (Pot Creek)
Rito de la Presa
Rito del Medio (Questa/El Rito)
Rito Primero
San Cristobal Creek
Sardinas (near la Pressa)
Tienditas Creek (Valle Escondito)
West Latir Creek

TULAROSA DRAINAGE
Otero County
Indian Creek (Three Rivers)